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COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
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Opening Statement of Chairman Jon Porter

Hearing of the House Government Reform Subcommittee on
the Federal Workforce and Agency Organization

Hearing on

“Yucca Mountain Project: Digging for the Truth”

June 29, 2005

Today marks the second hearing this Subcommittee has held with regard to its investigation into allegations that Federal employees have falsified documents relating to the Yucca Mountain project – a major public works project that carries with it the possibility of wide-ranging ramifications. As I have highlighted before, there is no question that issues surrounding the Yucca Mountain project are of paramount importance to my constituents and the rest of the citizens of Nevada. My critical feelings about the Project in and of itself from day one are well known and I do not need to repeat them here.

But as Chairman of this Subcommittee, my constituency now reaches a much broader scope. In my role as Chairman, I represent the Nation’s concerns when it comes to Federal employee issues and it is the Subcommittee’s responsibility to examine all aspects of Federal employee behavior and management issues. Under this responsibility, the Subcommittee has recently examined allegations of management and ethics concerns among high-level Federal scientists at the National Institutes of Health, and allegations of mismanagement at the Office of Special Counsel. We are now faced with a similar challenge. The investigation of alleged misconduct and mismanagement at the Yucca Mountain project is particularly important in that it carries potential catastrophic consequences, and, therefore, demands close Subcommittee attention.

At the last hearing, I noted in my opening statement that “there are many questions yet to be answered.” Since that time, the Subcommittee has launched into a full and thorough

investigation into the allegations of employee misconduct and agency mismanagement and staff has interviewed many of the key Department of Interior employees involved and have poured over many documents. I wish I could say that the investigation into this matter is going smoothly and that the investigative staff is getting to the bottom of the truth. There are, however, still a lot of questions yet to be answered.

The main reason for the continued unanswered questions is that an employee at the center of the allegations, Joseph Hevesi, has refused to meet with the investigators. Countless efforts have been made to meet privately with Mr. Hevesi to examine the context and intent of the e-mails he authored that seem to call into question the legitimacy of the science surrounding the storage of nuclear waste at Yucca Mountain. Without access to Mr. Hevesi, the investigation into the truth of what took place has been hampered. To say that Mr. Hevesi is a critical component of the Subcommittee's investigation is an understatement. Please allow me to highlight a few of the e-mails that Mr. Hevesi drafted:

- (E-mail dated 12/17/98:) "Like you've said all along, YMP has now reached a point where they need to have certain items work no matter what, and the infiltration maps are on the list. If USGS can't find a way to make it work, Sandia will (but for now they are definitely counting on us to do the job)."
- (E-mail dated 12/18/98) "The bottom line is forget about the money, we need a product or we're screwed and will take the blame. EVERYBODY will say that they told us to go ahead without a plan or budget in place...this is now CYA and we had better be good at it."
- (E-mail dated 10/29/98) "Wait till they figure out that nothing I've provided them is QA. If they really want the stuff they'll have to pay to do it right."
- (E-mail dated 3/15/99:) "Now I'm going to give you the inside scoop: I'm going to continue the regional modeling, even if it means ignoring direct orders from YMP management. . . . I have a pretty clear vision of the type of work that needs to be done to stay alive for the long-haul, and it very definitely involves getting product out there for the users and the public to see."
- (E-mail dated 4/22/99): "Here's the weird news; to get this milestone through QA, I must state that I have arbitrarily selected the analog sites. . . . So for the record, seven analog sites have been arbitrarily (randomly) selected. Hopefully these sites will by coincidence match the sites you have identified. . . . P.S. please destroy this memo."
- (E-mail dated 4/23/99:) "I am thinking that if I want to remain a viable team player on YMP (which may translate to continued funding), I need to show that we can get the job done and provide the modelers with the results they need."
- (E-mail dated 11/15/99:) "In the end I keep track of 2 sets of files, the ones that will keep QA happy and the ones that were actually used."

A plain reading of the e-mails not only suggests that Mr. Hevesi falsified data used in water infiltration modeling at the project, but it also casts reasonable doubt on the “soundness” of the science relied upon to justify the Project’s continued existence. That is why it is absolutely essential that the Subcommittee be able to examine Mr. Hevesi and find out the truth behind the e-mails he authored.

Mr. Hevesi is here today, but not voluntarily. He was compelled to be here today by a Congressional subpoena. This is not the way I like to conduct business., However, when an individual, especially a central figure of the investigation, refuses to meet with Congressional staff privately, there is no other alternative without shutting down the investigation. With so much at stake, in terms of the safety of Americans and billions of taxpayer dollars,, this investigation must go on without delay and without interference. I sincerely hope that Mr. Hevesi will do the right thing today and answer all of the questions directed to him by members of the Subcommittee and not choose to invoke his Fifth Amendment privilege during questioning.

I am also looking forward to hearing from the Department of Energy witness John Arthur today. Since the Subcommittee’s first hearing, the Department has been uncooperative in the Subcommittee’s efforts to obtain documents relating to the investigation, and has consistently denied Subcommittee requests to meet with key Department officials for interviews. Almost three months after one of the Subcommittee’s various requests, the Department of Energy made a half-hearted last-ditch effort this past Friday (June 24, 2005) to appease the Subcommittee, stating that the requested documents “would not be transmitted to the Subcommittee,” rather they would be available for review in the Department’s headquarters. This is not cooperation and is unacceptable. The Department claims no privilege that justifies withholding the requested documents from Congress.

Meeting with the Department officials and getting the relevant documents concerning potential employee misconduct is essential in light of DOE’s own admission in an internal document that “these e-mails may create a substantial vulnerability for the program.” I also find DOE’s lack of cooperation particularly disturbing since at the last hearing a DOE official testified that “[t]he critical importance of this issue requires action to ensure that the scientific basis of the Yucca Mountain repository project is sound. The safe handling and disposal of nuclear waste and maintaining public confidence in the safety of the repository are essential.”

Assuming that the statement was more than lip service and is believed by the Department, I find it curious that the Department is not bending over backwards to assist this Congressional investigation so that the truth may come out. Nineteenth Century American author and lawyer Christian Nestell Bovee once wrote, “Truth like the sun, submits to be obscured; but like the sun, only for a time.” The Subcommittee will not be deterred and will continue to seek the truth behind the allegations. The truth will be told.

I thank our witnesses for being here, and I look forward to the discussion